Supreme Court, U.S.
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No. 96-1791

In The

Supreme Court of the United States

October Term, 1996

GENE FLINN,

Petitioner,

vs.

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation, JOHN DOES, as indicted and unindicted confederates/co-conspirators, JANE DOES, as indicted and unindicted confederates/co-conspirators, and PRUDENTIAL-BACHE SECURITIES, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT PRUDENTIAL SECURITIES INCORPORATED'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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6 pp

LIST OF PARENT COMPANIES AND KNOWN WHOLLY-OWNED SUBSIDIARIES

Prudential Insurance Company of America,
Parent Company of Prudential Securities Incorporated

STATEMENT OF THE CASE

Petitioner Gene Flinn ("Flinn") filed a *pro se* RICO and civil rights complaint seeking damages against Prudential Property and Casualty Insurance Company ("Prudential Property") and yet-to-be identified "John Does and Jane Does." (Appendix B, p. 10). Thereafter, Flinn filed a seven-count amended complaint seeking damages and injunctive relief and adding Prudential Securities Incorporated ("PSI") as a defendant. (Appendix B, p. 10).

The United States District Court for the Southern District of Florida granted PSI's motion to dismiss Flinn's amended complaint with prejudice, holding that both the amended complaint, and a RICO statement filed by Flinn, were unintelligible and, therefore, insufficient to state a legal entitlement to relief. (Appendix B, p. 11) The District Court further concluded that PSI's motion to dismiss raised meritorious defenses. (Appendix B, p. 11) The District Court denied Flinn's motions for rehearing, and Flinn appealed to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit held:

> Although Flinn's amended complaint and RICO statements are replete with conclusory allegations of wrongdoing by the defendants, he fails to allege sufficient facts that identify the defendants' conduct, the nature of the enterprise, or any pattern of racketeering activity by the defendants. He further does not provide any specific facts as to the alleged RICO conspiracy entered into by the defendants.
>
> The fraud claims are, at best, replete with conclusory allegations that fail to provide adequate notice to the defendants of any fraud

> claims against them. *See* Fed.R.Civ.P. 8. About the damage to reputation claims, they are replete with conclusory allegations that fail to provide adequate notice to defendants of any cognizable claim against them.
>
> For the civil rights claim under § 1981 other than citing the statute in his amended complaint Flinn has failed to allege facts indicating that the defendants subjected Flinn to any racial or ethnic discrimination. On the civil rights claim under § 1983, Flinn has failed to allege any facts indicating that the defendants, who are private companies, were state actors. (Appendix B at p. 11-12)

The Eleventh Circuit, therefore, affirmed the District Court's Order dismissing Flinn's amended complaint, and denied Flinn's motion for rehearing. (Appendix C, p. 13)

Flinn thereafter filed his petition for a writ of certiorari.

ARGUMENT

Flinn's petition fails to demonstrate any basis for issuance of a writ of certiorari. The petition does not show: (1) that the Eleventh Circuit has entered a decision in conflict with the decision of another United States Court of Appeals in the same important matter; or, (2) that the Eleventh Circuit has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or, (3) that the Eleventh Circuit has so far departed from the accepted and usual course of

judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers; or, (4) that the Eleventh Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. These are the reasons this Court generally considers in granting a petition for a writ of certiorari, *see* Supreme Court Rule 10, and Flinn's petition presents none of them. Instead, Flinn's petition brings before this Court the same type of unintelligible, conclusory and irrelevant accusations which he previously visited upon the District Court and the Eleventh Circuit Court.

As a review of the Eleventh Circuit's decision demonstrates, and contrary to statements in the petition, Flinn's amended complaint contained no allegations against PSI similar to those presented in the case of *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989). The Eleventh Circuit did not cite *H.J. Inc.* in its decision below, and made no statements of law in its decision which in any way conflict with or depart from this Court's rulings in *H.J. Inc.* Similarly, Flinn's petition does not correctly describe the facts or holding in either *The Florida Bar v. Gene Flinn*, 575 So. 2d 634 (Fla. 1991) or *In re James H. Himmel*, 533 N.E. 2d 790 (Ill. 1988).

As this Court has indicated in Supreme Court Rule 10, "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Even from that perspective, Flinn's petition fails to

direct this Court to any erroneous factual finding or any misapplication of a properly stated rule of law.

PSI respectfully submits that there is simply no basis for issuance of a writ of certiorari in this case.

Finally, in accordance with Supreme Court Rule 15.2, PSI also advises the Court that:

(a) Flinn did not take PSI's deposition in this case, and the statement to the contrary at page six of Flinn's petition is therefore inaccurate.

(b) Flinn's amended complaint did not allege that PSI had placed "its member on the grievance panel trying Petitioner to protect its future economic interests through perpetrating a disbarment of Petitioner".

CONCLUSION

For the reasons and authorities cited, PSI respectfully submits that Flinn's petition for a writ of certiorari should be denied.

Respectfully submitted,

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